F & G Research, Inc v. Google, Inc Doc.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

F & G RESEARCH, INC., Plaintiff, v. GOOGLE INC., Defendant.	Case No. 5:07-cv-00130-RLV-DLH

ANSWER TO COMPLAINT

In response to the allegations of the Complaint for Patent Infringement, Defendant Google Inc. ("Google") answers as follows:

THE PARTIES

1. Regarding paragraph 1, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis, denies them.

2. Regarding paragraph 2, Google admits it is a Delaware corporation, but denies that its principal place of business is located in Lenoir, North Carolina, or within this district.

JURISDICTION AND VENUE

3. Regarding paragraph 3, Google admits that the Complaint purports to state an action under the patent laws and for that reason the Court has jurisdiction over the claims.

4. Regarding paragraph 4, Google denies the allegations.

5. Regarding paragraph 5, solely for the purpose of this action, Google does not contest venue in this District. However, the interests and convenience of the parties would be better served by transferring this case to a different district.

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6. Regarding paragraph 6, Google admits that the ’229 patent recites Messrs. Gilligan and Falcon as purported inventors and is titled as alleged. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 6, and on that basis, denies them.

7. Regarding paragraph 7, Google denies the allegations.

8. Regarding paragraph 8, Google denies the allegations.

9. Regarding paragraph 9, Google denies the allegations.

10. Regarding paragraph 10, Google denies the allegations.

11. Regarding paragraph 11, Google denies the allegations.

12. Regarding paragraph 12, Google denies the allegations.

CLAIM FOR RELIEF

Google denies that F&G is entitled to any of the relief sought on page 3 of the Complaint. To the extent any allegations of the Complaint are not addressed above, they are denied.

AFFIRMATIVE DEFENSES

In further response to the Complaint or as affirmative defenses, Google alleges as follows:

1. Plaintiff’s claims are barred by *res judicata* and collateral estoppel. Plaintiff previously sued Google for infringement of the patent-in-suit in the United States District Court for the Southern District of Florida (Civil Action No. 06-cv-60905). The Honorable Cecilia M. Altonaga granted summary judgment that Google has not infringed the patent-in-suit, either directly or indirectly. A copy of Judge Altonaga’s Opinion and Final Judgment is attached hereto as Exhibit 1. Plaintiff has filed a Notice of Appeal of such judgment (Exhibit 2), and the appeal is pending. Plaintiff’s filing of the instant action, which raises the same claims as those

raised, litigated, and resolved in the Southern District of Florida, is barred by the doctrines of claim preclusion and *res judicata*. In addition, Judge Altonaga found plaintiff's claims to be frivolous, and awarded sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure (see Exhibit 1) and 35 U.S.C. § 285. Plaintiff is barred, by the doctrine of collateral estoppel, from asserting that the instant case also is not frivolous and deserving of sanctions.

2. To the extent that plaintiff's claims are not otherwise barred, they are barred by the doctrine of patent exhaustion and/or explicit or implied license. Plaintiff has broadly licensed the patent-in-suit to makers of scrolling mice, whose users have a right to use such mice in connection with any software, including Google's Google Earth.

3. As was previously litigated and concluded by Judge Altonaga, Google does not infringe, directly or indirectly, literally or under the doctrine of equivalents, the '229 patent.

4. On information and belief, a reasonable opportunity for discovery will establish that the relevant claims of the '229 patent are invalid for failure to comply with at least one of 35 U.S.C. §§102, 103, and 112.

REQUEST FOR RELIEF

Wherefore, defendant Google requests the following relief:

1. That plaintiff take nothing by way of the Complaint, and that the Complaint be dismissed with prejudice;

2. That the Court award Google its reasonable attorneys' fees and costs pursuant to Rule 11 of the Federal Rules of Civil Procedure, 35 U.S.C. § 285, 28 U.S.C. § 1927, or as otherwise permitted by law; and

3. That the Court grant any further relief that it deems just and equitable.

Dated: January 22, 2008

By: /s/ K. Matthew Miller

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GOOGLE INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January, 2007, I electronically filed the foregoing *Answer to Complaint* with the Court's CM/ECF system, which will send email documentation to the following attorneys of record:

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